

China

- China reforms foreign direct investment regulatory regime

Japan

- Guidance on new transfer pricing documentation rules

United Arab Emirates

- Promoting foreign investment funds in the UAE just got harder

Hong Kong

- BEPS consultation paper launched in Hong Kong
- SFC issues circular on automatic exchange of financial account information
- Hong Kong to commence automatic exchange of financial account information in tax matters with Japan and UK in 2018
- SFC issues advisory circular on client identity verification in account opening process
- SFC publishes FAQs on client agreement requirements

Singapore

- MAS publishes revised FAQs on licensing and registration of fund management companies
- MAS publishes FAQs on offers of shares, debentures and collective investment schemes
- Financial institutions operating in Singapore can expect more aggressive anti-money laundering/counterterrorist enforcement
- MAS issues revised guidelines on outsourcing in Singapore
- MAS revises guidelines on criteria for grant of a capital markets services licence other than for fund management and real estate investment trust management

REGULATORY WORKING GROUP

Matthias Feldmann (Chair), Clifford Chance

Ben Brandon-King, Aberdeen Asset Management Asia Limited

Yong Kai Wong, CITIC Capital

Ivor Morris, KPMG

John Moutsopoulos, Norton Rose Fulbright

Pui Ming Lai, PGIM Real Estate

Important Information: This newsletter has been prepared by the contributors and the Asian Association for Investors in Non-listed Real Estate Vehicles Limited (ANREV), to provide you with general information only. It is not intended to take the place of professional advice. In preparing this newsletter, the contributors did not take into account the investment objectives, financial situation or particular needs of any particular person. Before acting on the information provided in this newsletter you should consider whether the information is appropriate to your individual needs, objectives and circumstances. No representation is given, warranty made or responsibility taken as to the accuracy, timeliness or completeness of the information contained in this newsletter. Neither ANREV nor the contributors are liable to the reader for any loss or damage as a result of the reader relying on this information.

China

China reforms foreign direct investment regulatory regime

On 3 September 2016, China's Standing Committee of the National People's Congress adopted a resolution to abolish the current examination and approval regime applicable to the establishment of most foreign-invested enterprises in China.

On the same day, the Ministry of Commerce published a set of draft measures to implement the change. Both developments represent a major milestone moving towards a simplified regime for regulating foreign direct investment in China.

For details, please click [here](#).

Source: Clifford Chance Client Briefing, September 2016

Hong Kong

BEPS consultation paper launched in Hong Kong

The Hong Kong government launched a public consultation exercise on 26 October 2016 to gauge views on the implementation of the OECD's anti-base erosion and profit shifting (BEPS) initiatives.

- The Hong Kong government has said it wishes to take a pragmatic approach and to enhance clarity and certainty while striving to maintain a simple, neutral and transparent tax regime.
- The most significant proposal is for the adoption of a formal transfer pricing regime in Hong Kong, with mandatory documentation requirements.
- Along with additional compliance and reporting obligations, there will be penalties for non-compliance.

KPMG observes that other than limited exemptions for smaller taxpayers, Hong Kong taxpayers with related party dealings will need to formalise and document their transfer pricing arrangements with related parties. The devil will be in the details to follow.

For details, please click [here](#).

Source: KPMG, October 2016

SFC issues circular on automatic exchange of financial account information

The Securities and Futures Commission (SFC) has issued a circular to all licensed corporations and registered institutions to draw their attention to new statutory requirements regarding automatic exchange of financial account information (AEOI).

The Inland Revenue (Amendment) (No.3) Ordinance 2016 is intended to enhance tax transparency and combat cross-border tax evasion. It stipulates the due diligence obligations on financial institutions to identify financial accounts held by tax residents of reportable jurisdictions, collect the reportable information of these accounts and furnish the information to the Inland Revenue Department (IRD). The IRD will exchange the information with the tax authorities of the AEOI partner jurisdictions on an annual basis.

Hong Kong aims to conclude negotiations with AEOI partners by the end of 2016. It is anticipated that financial institutions will need to collect information of the relevant financial accounts each calendar year from 2017, and furnish the information to the IRD each following year.

The SFC has reminded licensed corporations and registered institutions to comply with the new requirements and to note any further announcements regarding AEOI on the IRD's website. If in doubt concerning their obligations in relation to AEOI, licensed corporations and registered institutions are advised to seek appropriate legal or other advice.

For details, please click [here](#).

Source: Clifford Chance Alert, November 2016

Hong Kong to commence automatic exchange of financial account information in tax matters with Japan and UK in 2018

Hong Kong has signed agreements with Japan and the United Kingdom with a view to commencing automatic exchange of financial account information in tax matters (AEOI) with these two tax jurisdictions in 2018.

In September 2014, Hong Kong indicated its support for the standard issued by the Organisation for Economic Co-operation and Development (OECD) on AEOI, with a view to commencing the first exchanges with appropriate partners on a reciprocal basis by the end of 2018. An ordinance amending the Inland Revenue Ordinance (IRO) was passed by the Legislative Council in June 2016 to provide the necessary legal framework for Hong Kong to implement AEOI, and came into effect on 30 June 2016.

The Inland Revenue Department (IRD) has recently signed bilateral competent authority agreements (CAAs), based on the model CAA published by the OECD, with Japan and the United Kingdom. The Secretary for Financial Services and the Treasury has issued a Notice to put these two jurisdictions into a list of 'reportable jurisdictions' under the IRO. The Notice also puts a list of 'participating jurisdictions' under the IRO, which includes all jurisdictions committed to adopting AEOI by 2018 (i.e. 100 jurisdictions excluding Hong Kong).

For details, please click [here](#).

Source: Clifford Chance Alert, October 2016

SFC issues advisory circular on client identity verification in account opening process

Further to its circular concerning know your client and account opening procedures issued on 12 May 2015, the Securities and Futures Commission (SFC) has issued an advisory circular to provide more guidance to the industry on compliance with the regulatory requirements on account opening.

The circular notes that client identity verification is an essential element of an effective customer due diligence process which intermediaries need to put in place to guard against reputational, operational, legal and financial risks. The requirements on account opening are set out in paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC, which requires intermediaries to take all reasonable steps to establish the true and full identity of each of their clients. In a face-to-face situation, the signing of the account opening documents (e.g. client agreement) and the sighting of the identity documents can be performed in the presence of an employee of the intermediary.

In a non-face-to-face situation where a client is not physically present, intermediaries will generally not be able to determine the identity documents provided to them belong to the client. Paragraph 5.1 of the Code of Conduct provides specific guidelines to intermediaries on acceptable approaches in performing the client identity verification which could apply to the situation where onboarding of clients is conducted online.

For details, please click [here](#).

Source: Clifford Chance Alert, October 2016

SFC publishes FAQs on client agreement requirements

The Securities and Futures Commission (SFC) has published a set of frequently asked questions (FAQs) on client agreement requirements. The FAQs are intended to provide guidance to intermediaries on the application of the new Code of Conduct for Persons Licensed by or Registered with the SFC requirements governing the contents of client agreements, which will come into effect on 9 June 2017. In particular, the FAQs provide guidance to intermediaries that engage in asset management and corporate finance activities.

For details, please click [here](#).

Source: Clifford Chance Alert, October 2016

Japan

Guidance on new transfer pricing documentation rules

Further to the 2016 tax reform outlined on 16 December 2015, the transfer pricing documentation rules have been amended in line with Action 13: transfer pricing documentation and country-by-country reporting of the OECD BEPS initiatives. In connection with this, on 30 June 2016, the National Tax Agency released guidance on updated documentation requirements for the following:

- For specific multi-national groups (whose total consolidated revenue is JPY100 billion or more), a three-tiered approach consisting of country-by-country reports, master files and local files; and local files.

For details, please click [here](#).

Source: Mayer Brown JSM Asia Tax Bulletin, September 2016

Singapore

MAS publishes revised FAQs on licensing and registration of fund management companies

The Monetary Authority of Singapore (MAS) has revised its frequently asked questions (FAQs) on the licensing and registration of fund management companies (FMC).

The key updates include the following:

- Engagement of audit firms – the MAS generally discourages the appointment of the same audit firm to provide the FMC with both external and internal audit services.
- Directors – the MAS has clarified the difference between an executive director and a non-executive director and expects the job titles and designations of directors to reflect the substance of the role and responsibilities of the individual. The MAS also expects the executive directors of the FMC (i.e. directors who are involved in the day-to-day running of the FMC and make executive decisions on behalf of the business of the FMC) to be resident in Singapore to oversee the activities of the FMC.
- Provision of financial advice – FMCs which provide factual information (i.e. information which does not take into account the specific investment objectives, financial situation and the particular needs of any person who may receive the information) on investment products managed by the FMC are not required to file the notification with MAS to operate as an exempt financial adviser in respect of providing investment advice because the provision of such factual information is not considered to be a financial advisory activity.

- Processing time for registration or licensing applications – the MAS has clarified that it will take approximately 4 months (instead of 12 weeks as previously stated in the FAQs) to process and approve an application to be a licensed or registered FMC (which is complete, free of errors and is accompanied by the requisite supporting documentation).
- Good quality submissions for registration or licensing applications should include, amongst other things, fit and proper declarations by the applicant for its shareholders, directors and representatives.

For details, please click [here](#).

Source: Clifford Chance Alert, October 2016

MAS publishes FAQs on offers of shares, debentures and collective investment schemes

The Monetary Authority of Singapore (MAS) has published a set of frequently asked questions (FAQs) on offers of shares, debentures and collective investment schemes (CIS).

Amongst other things, the FAQs cover the following:

- public exposure of prospectuses;
- stop orders and supplementary/replacement prospectuses;
- the MAS' review of lodged prospectuses; and

CIS related FAQs relating to:

- recognition of foreign funds;
- real estate investment trusts (REITs);
- restricted schemes;
- requirements imposed on trustees to have professional indemnity insurance;
- high fees and high expense ratios of unit trusts;
- scope of CIS that will be regulated under the Securities and Futures Act;
- advertisements; and
- leveraged/inverse products.

For details, please click [here](#).

Source: Clifford Chance Alert, August 2016

Financial institutions operating in Singapore can expect more aggressive anti-money laundering/counterterrorist enforcement

On 25 July 2016, the MAS, announced that it will pursue more “intrusive” money-laundering inspections of financial institutions that it has identified as having a “higher risk” of being conduits for money laundering and illicit financing. This announcement came after the discovery that local financial institutions had been used as conduits for funds in transactions connected to 1Malaysia Development Berhad, the government development fund of Malaysia.

On 1 August 2016, MAS introduced a dedicated anti-money laundering department to streamline anti-money laundering and counterterrorist financing (AML/CFT) policies. A dedicated supervisory team is being established to monitor risks and perform on-site inspections of financial institutions. This department will perform functions that were previously divided among MAS departments. MAS is also in the process of forming a separate enforcement department to investigate suspected violations.

MAS also declared in its 2015-16 annual report that it will be “exploring the use of machine learning algorithms to ... detect patterns across suspicious money laundering transactions” and “using data analytics to enhance market surveillance.” In view of this more aggressive supervisory and enforcement regime, it is critical for financial institutions with operations in Singapore to review their AML/CFT due diligence processes and policies and step up ongoing monitoring.

For details, please click [here](#).

Source: *Sidley Austin LLP, August 2016*

MAS issues revised guidelines on outsourcing in Singapore

On 27 July 2016, the MAS issued the revised Guidelines on Outsourcing (the Guidelines). The Guidelines represent a culmination of extensive industry and public consultation on this topic, beginning with the Consultation Paper on Guidelines on Outsourcing issued on 5 September 2014 (Consultation Paper). In conjunction with the Guidelines, the MAS also issued its response to feedback received on the Consultation Paper.

The Guidelines apply to all financial institutions that are licensed, approved, registered or regulated by the MAS.

For details, please click [here](#).

Source: *Sidley Austin LLP, August 2016*

MAS revises guidelines on criteria for grant of a capital markets services licence other than for fund management and real estate investment trust management

The Monetary Authority of Singapore has published revised guidelines on the criteria for the grant of a capital markets services (CMS) licence other than for fund management and real estate investment trust management.

The key updates made to the guidelines are as follows:

- persons applying for a CMS licence to carry out the regulated activity of real estate investment trust management should now refer to the Notice to all holders of a Capital Markets Services Licence for Real Estate Investment Trust Management (SFA 04-N14) and the Guidelines to

all holders of a Capital Markets Services Licence for Real Estate Investment Trust Management (SFA 04-G07);

- references to the regulated activity of real estate investment trust management at paragraph 8 and Annex 1(E) have been deleted.

For details, please click [here](#).

Source: *Clifford Chance Alert, July 2016*

United Arab Emirates

Promoting foreign investment funds in the UAE just got harder

The UAE Securities and Commodities Authority’s (SCA) recent Board Decision No.9 of 2016 on the regulation of investment funds (the IFRs) came into force on 1 August. It repeals SCA Board Decision No.37 of 2012 on the same subject (the Old IFRs) and, in doing so, makes some important changes to the UAE investment funds regime.

The IFRs make considerable improvement to the Old IFRs, particularly in respect of the licensing requirements for UAE investment funds. However, for promoters of foreign funds in the UAE, the IFRs are now more restrictive and impose additional costs and hurdles for registering foreign funds with the SCA.

For details, please click [here](#).

Source: *Clifford Chance Alert, October 2016*